THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 3397 of 1996

30-08-2005

Between:

M.Subbaiah S/o. Subbaramaiah
R/o. Nellore Nellore Dist.

..... PETITIONER

AND

1 The Dist. Collector Nellore Dist.
Nellore Dist. And others.

.....RESPONDENTS

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O R D E R:

Petitioner filed this petition alleging that when he was recruited as a driver in 1953 in the irrigation department, the then Superintendent Engineer permitted him to occupy 33 Ankanams of land in the compound of the bungalow of the Executive Engineers and so he occupied the same and raised a thatched shed therein during 1953 and when that thatched shed was burnt down he constructed a pucca house and thereafter he sought for a patta in respect of the land in his occupation, as pattas were issued to the occupants in the nearby area, and that the superior officers in the department in fact have recommended his case and in spite thereof he received a notice calling upon him to pay a ground rent of Rs.206.05 ps per year from the date of his occupation and subsequently by the notice dated 20-1-1996, 3rd respondent (Dy.Executive Engineer) directed him to remove the constructions made by him and vacate the Government land. These notices are challenged by the petitioner in this writ petition.

The case of the respondents is that petitioner who was appointed as a part time driver for driving the vehicle of Executive Engineer in 1953 was not permitted by anybody to occupy the Government land and that all the letters being relied on by the petitioner said to have been written by the officers of the irrigation department are brought into existence by

the petitioner for the purpose of this petition and are not genuine and that he constructed a building with asbestos roof without obtaining permission from anybody and as an encroacher he has no right to continue in possession of the Government site and that no patta was granted to anybody to the land within the precincts of the bunglows of the officers of the irrigation department and that pattas are granted in respect of land in abundoned tank, and merely because some persons were granted pattas in a land in an abandoned tank near the encroached area of the petitioner he is not entitled to claim patta in respect of the land in his occupation and so the petitioner who is an encroacher, is not entitled to any relief.

The contention of the learned counsel for the petitioner is that since the petitioner has been in continuous possession and enjoyment of the land from over four decades prior to filing of this petition and since he constructed a pucca house after obtaining permission from the then Executive Engineer and Superintendent Engineer and the Municipality, he is entitled to continue in possession thereof moreso because he perfected his title to the property in his possession by adverse possession, and so the letters issued by the 3rd respondent calling upon the petitioner to pay ground rent and to vacate the property are liable to be set aside.

The contention of the learned Assistant Government Pleader is that petitioner who is an encroacher is not entitled to any relief moreso because some of the documents relied on him are not genuine and have been brought into existence for the purpose of this writ petition.

Since the land in occupation of the petitioner admittedly belongs to the government and since the case of the petitioner that he initially raised a thatched shed therein as per the permission granted to him by the then Superintendent Engineer, his entry and continuing in possession is only permissive i.e. as a licencee, and so prima-facie his contention that he perfected his title to the land in his possession by adverse possession cannot be accepted. If the petitioner feels that he has either some right in the property in his occupation and that he perfected his title thereto by adverse possession, his remedy is to file a suit in a civil court but not a writ petition, inasmuch as disputed questions of fact cannot be decided in a writ petition, and since the documents produced by the petitioner along with the writ petition show that he was asked to pay ground rent at the rate of Rs.206.05 ps. from 1956 onwards and even in 1983. In view thereof, petitioner cannot be granted any relief, and hence the petition is liable to be and hence is dismissed. No costs.

30-08-2005

Mjl/*